

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
TIFFANY AND COMPANY and  
TIFFANY (NJ) LLC, :

Plaintiffs and Counter-Defendants, :

- against - :

COSTCO WHOLESALE CORPORATION, :

Defendant and Counter-Plaintiff. :

**ECF Case**

13 Civ. 1041 (LTS)

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**DECLARATION OF JAMES W. DABNEY**

1. My name is James W. Dabney. I am a member of the bar of this Court and of the firm Fried, Frank, Harris, Shriver & Jacobson LLP, counsel for Costco Wholesale Corporation (“Costco”) in this action. I have personal knowledge of the matters stated in this declaration.

2. Annexed hereto as Exhibit 1 are copies of Costco’s First Request for Production of Documents, First Set of Written Interrogatories, and a Notice of Deposition served April 12, 2013. Plaintiffs have not yet provided any discovery in response to these requests.

3. Annexed hereto as Exhibit 2 is a copy of an Amended Notice of Deposition of plaintiff Tiffany and Company (“TAC”) served April 22, 2013. TAC has not yet appeared for the noticed deposition.

4. Annexed hereto as Exhibit 3 is a copy of document subpoena served April 16, 2013, on third-party Gemological Institute of America, Inc. (“GIA”). GIA has not yet produced documents responsive to this subpoena.

5. Annexed hereto as Exhibit 4 is a copy of a document subpoena served April 16, 2013, on third-party Reed Elsevier, Inc. (“Reed Elsevier”). Reed Elsevier has not yet produced documents responsive to this subpoena.

6. Annexed hereto as Exhibit 5 is a copy of a document subpoena served April 16, 2013, on third-party Springer Science + Business Media LLC (“Springer”). Springer has produced certain documents but at this stage has objected to producing documents containing confidential business information. Costco is currently considering the most appropriate way to secure additional discovery from Springer.

7. Annexed hereto as Exhibit 6 is a copy of a document subpoena served April 24, 2013, on third-party Encyclopaedia Britannica, Inc. (“Encyclopaedia Britannica”). Encyclopaedia Britannica has produced certain documents but at this stage has objected to producing documents containing confidential business information. Costco is currently considering the most appropriate way to secure additional discovery from Encyclopedia Britannica.

8. Annexed hereto as Exhibit 7 is a copy of a document subpoena served April 24, 2013, on third-party Random House, Inc. (“Random House”). Random House has produced certain documents but at this stage has objected to producing documents containing confidential business information. Costco is currently considering the most appropriate way to secure additional discovery from Random House.

9. Annexed hereto as Exhibit 8 is a copy of a document subpoena served April 29, 2013, on third-party Wiley Publishing, Inc. (“Wiley”). Wiley has not yet produced any documents in response to this subpoena and has voiced objection to producing documents

containing confidential business information. Costco is currently considering the most appropriate way to secure additional discovery from Wiley.

10. Annexed hereto as Exhibit 9 is a copy of a document subpoena served on or about May 2, 2013, on third-party Jewelers Press. Jewelers Press has not yet responded to this subpoena.

11. Annexed hereto as Exhibit 10 is a copy of a document subpoena served on or about May 2, 2013, on third-party Sourcebooks, Inc. ("Sourcebooks"). Sourcebooks has not yet responded to this subpoena.

12. Annexed hereto as Exhibit 11 is a copy of a document subpoena served on or about May 2, 2013, on third-party Stuller, Inc. ("Stuller"). Stuller has not yet responded to this subpoena.

13. Annexed hereto as Exhibit 12 is a copy of a document subpoena served on or about May 2, 2013, on third-party Manufacturing Jewelers and Suppliers of America, Inc. ("MJSA"). MJSA has not yet responded to the subpoena.

14. Attached hereto as Exhibit 13 is a copy of a letter dated March 20, 2013, from attorney Jeffrey A. Mitchell to the undersigned.

15. Attached hereto as Exhibit 14 is a copy of a letter dated March 26, 2013, from the undersigned to attorney Jeffrey A. Mitchell.

16. Attached hereto as Exhibit 15 is a copy of a letter dated March 27, 2013, from attorney Jeffrey A. Mitchell to the undersigned.

17. Attached hereto as Exhibit 16 is a copy of a letter dated March 28, 2013, from the undersigned to attorney Jeffrey A. Mitchell.

18. On April 12, 2013, I spoke by telephone with attorney Jeffrey A. Mitchell concerning discovery and the proposed motion for summary judgment referred to in Mr. Mitchell's letters dated March 20 and 27, reproduced in Exhibits 13 and 15, above. During this conference I maintained the positions stated in Exhibits 14 and 16, above. During this conference Mr. Mitchell did not mention any plan to file a motion invoking Federal Rule of Civil Procedure 12(c).

19. Attached hereto as Exhibit 17 is a copy of a letter dated April 19, 2013, from Richard M. Koehl to attorney Don Abraham.

20. Attached hereto as Exhibit 18 is a copy of a letter dated April 19, 2013, from attorney Jeffrey A. Mitchell to Richard M. Koehl.

21. Attached hereto as Exhibit 19 is a copy of a letter dated April 19, 2013, from Richard M. Koehl to attorney Jeffrey A. Mitchell.

22. Attached hereto as Exhibit 20 is a copy of a letter dated April 19, 2013, from attorney Jeffrey A. Mitchell to Richard M. Koehl.

23. Attached hereto as Exhibit 21 is a copy of a letter dated April 20, 2013, from Richard M. Koehl to attorney Jeffrey A. Mitchell.

24. Attached hereto as Exhibit 22 is a copy of a letter dated April 22, 2013, from attorney Jeffrey A. Mitchell to Richard M. Koehl.

I, JAMES W. DABNEY, hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
May 6, 2013

By: s/ James W. Dabney  
James W. Dabney